

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

V.

CIVIL ACTION NO.: 3:22cv109-GHD-RP

**BAILEY’S TRUCKING LLC and
XAVIER BAILEY, INDIVIDUALLY**

**DEFENDANTS/
COUNTER-PLAINTIFFS**

**BAILEYS TRUCKING, LLC and
XAVIER BAILEY, INDIVIDUALLY**

**THIRD PARTY
PLAINTIFFS**

V.

**BLUE RIDGE BANK NATIONAL ASSOCIATES
D/B/A BLUE RIDGE BANK N.A., BLUE RIDGE BANK,
& CAROLINA STATE BANK; NICK HOOK;
BLUE RIDGE CORPORATION,
& JOHN DOES 1-10.**

THIRD PARTY DEFENDANTS

THIRD-PARTY COMPLAINT

COMES NOW, Bailey’s Trucking LLC and Xavier Bailey (“Defendants”) and files this,
their Third-Party Complaint as follows:

Parties

1. Xavier Bailey is a resident of Tallahatchie County and is the owner of Bailey’s Trucking, LLC.
2. Bailey’s Trucking, LLC is a resident of Tallahatchie County.
3. BLUE RIDGE BANK NATIONAL ASSOCIATION is a financial institution granted the authority to approve and issue businesses Pandemic Payment Protection funds authorized by the Small Business Administration through the CARES ACT.

4. Blue Ridge Bank National Associates is a national bank. Upon information and belief, it is a wholly owned subsidiary of Blue Ridge Corporation. Blue Ridge Bank regularly and systematically conducts business throughout the State of Mississippi, including in this district. Among other things, Blue Ridge Bank National Associates was engaged in the business of providing Pandemic Payment Protection Funds to small businesses, including the Third-Party Plaintiffs. It may be served by serving its agent for process: Bryan K. Plum at 3202 Northline Avenue, Greensboro, NC, 27408, United States.
5. Upon information and belief, Nick Hook is employed as the Vice President and Business Banking Officer at Blue Ridge Bank National Associate. Therefore, he is an agent or employee of Blue Ridge Bank. He also approved Mr. Bailey's application. He may be served at his place of business located at 3202 Northline Ave., Greensboro, NC 27408.
6. Defendants John Doe 1-10 are fictitious Defendants whose identities are yet unknown to Plaintiff but are named herein pursuant to Federal R. Civ. P. 17(a)(3). Insofar as the unknown defendants contributed to or were intentional and/or negligent in regard to the events which gave rise to the instant lawsuit, and that may in turn be liable for all or part of Third-Party Plaintiffs damages.

Jurisdiction

7. This Court has original jurisdiction over the parties and the subject matter of this action. Third-Party Plaintiffs' claims against these Third-Party Defendants arise out of the counterclaim filed in this cause.

Facts

8. Xavier Bailey is the owner and operator of Bailey Trucking, LLC.
9. Xavier Bailey applied for a Small Business Administration, Pandemic Payment Protection Loan through Blue Ridge Bank.
10. Xavier Bailey was referred to Blue Ridge Bank by Delphinus Capital Bank.
11. During the application phase, Third Party Defendants had a duty to collect and analyze all documents to ensure Mr. Bailey submitted required documents before requesting PPP funds.
12. However, Blue Ridge Bank failed to request pertinent documents, failed to verify compliance with loan requirements before granting approval, and used automated systems to change applications to obtain easier approvals and higher payouts, which benefited the bank financially.
13. Third Party Defendants thereby breached their fiduciary duty to Mr. Bailey, as a principal/beneficiary, when they knew or should have known Mr. Bailey and Bailey's Trucking, LLC could be subjected to penalties if they did not properly fulfill their duties.
14. Instead, Third Party Defendants acted in their own best interest to process as many applications as possible in order to receive financial gain.

BREACH OF FIDUCIARY DUTY

15. A breach of fiduciary duty occurs when the fiduciary acts in the interest of themselves, rather than the best interest of the principal.
16. Third Party Defendants acted as a fiduciary to Xavier Bailey and Bailey's

Trucking, LLC.

17. Blue Ridge Bank owed Mr. Xavier Bailey and Bailey's Trucking company fiduciary duties of care, loyalty, and good faith to exercise good business judgment, to act prudently when reviewing his application for government funds, to discharge their actions in good faith, to act in the best interests of Mr. Bailey and Bailey's Trucking, and to put the interests of Mr. Bailey and his trucking company above their own interests.
18. Blue Ridge Bank breached a fiduciary duty to Mr. Bailey when approving Bailey's Trucking LLC for funds it knew or should have known the company was ineligible to receive by failing to request proper documents and paperwork—since it knew the standards required by the Small Business Administration.
19. Third Party Defendants breached their fiduciary duty by failing to disclose to Mr. Bailey and Bailey's Trucking that they were ineligible for PPP funds.
20. Hence, Third Party Defendants placed their interest to obtain funds for applications above Mr. Bailey and Bailey's Trucking, LLC.
21. Xavier Bailey and Bailey's Trucking LLC now suffer economic and mental damages because of Blue Ridge Bank's breach.

WHEREFORE PREMISES CONSIDERED, Third-Party Plaintiffs demand judgment of these Third-Party Defendants, jointly and severally, along with pre- and post-judgment interest as allowed by law and all costs of Court. Third-Party Plaintiffs also request attorney's fees and expenses. Third-Party Plaintiffs pray for such other relief that this Court may deem appropriate.

Respectfully, submitted, this the 19th day of December 2022.

**BAILEY'S TRUCKING, LLC and
XAVIER BAILEY, THIRD PARTY PLAINTIFF**

Respectfully Submitted,

BY: /s/ Victoria V. Washington
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CERTIFICATE OF SERVICE

I, Victoria V. Washington, Attorney for Defendant, do hereby certify that I have on this date electronically filed the foregoing "Third Party Complaint" with the Clerk of the United States District Court using the ECF system, which sent notification of such filing to Mr. Joseph Webster, Jr., Assistant United States Attorney, at Joseph.Webster@usdoj.gov.

This 19th day of December 2022.

/s/ Victoria V. Washington, MSB #104843
Victoria V. Washington, MSB#104843